

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONALD BROWN,
Petitioner,

v.

RAYMOND LAWLER, et al.,
Respondents.

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CASE NO. 10-cv-0428

ORDER

The Court has carefully reviewed all pleadings, the full record, and the Report and Recommendation filed by U.S. Magistrate Judge Elizabeth T. Hey (Dkt. No. 32) (“R&R”). The Court has also reviewed the Objections filed by Petitioner (Dkt. No. 35), and fully concurs with Magistrate Judge Hey’s conclusions concerning procedural default and Petitioner’s inability to overcome the hurdles created by such. Moreover, where Petitioner may not have defaulted, the Court concurs with Magistrate Judge Hey’s conclusions that Petitioner’s contentions are without merit,¹ and thus are insufficient to justify an evidentiary hearing. *Williams v. Beard*, 637 F.3d

¹In his Petition, Mr. Brown alleges that his trial/direct appeal counsel was ineffective because he: 1) failed to interview and present certain alibi witnesses; 2) failed to request an alibi instruction; 3) stipulated that an incriminating letter found in Petitioner’s friend’s residence was written by Petitioner; and 4) failed to file an *allocatur* petition and to consult with Petitioner concerning the filing of such a petition. Mr. Brown also alleges that the cumulative effect of the above alleged errors amounts to a violation of his Sixth Amendment rights.

In response, Magistrate Judge Hey concludes Petitioner’s third and fifth claims are procedurally defaulted, as well as meritless, and that his first, second and fourth claims lack merit, as “the state courts reasonably applied the standards set forth in *Strickland* [*v. Washington*, 466 U.S. 668 (1984) (setting forth standard for petitioner seeking *habeas* relief on grounds of ineffective assistance of counsel)] to deny relief to Brown.” R&R at 11. Upon careful *de novo* review of the state court record, this Court concurs; Petitioner has failed to raise any Objections beyond reiteration of the underlying facts and arguments set forth in his Petition and related responses. *See Cherry v. Wynder*, Civ. No. 05-2560, 2007 WL 983826, at *7-9 (E.D. Pa. Mar.

195 (3d Cir. 2011). Petitioner has not presented any compelling basis to disturb the decisions of the Pennsylvania courts.

AND NOW, this 4th day of June, 2012, it is hereby ORDERED that:

1. The Report and Recommendation of Magistrate Judge Elizabeth T. Hey is APPROVED and ADOPTED;
2. Petitioner's request for an evidentiary hearing is DENIED;
3. The Petition for a Writ of *Habeas Corpus* is DENIED;
4. The Court DECLINES to issue a certificate of appealability; and
5. The Clerk of Court shall mark this case closed for all purposes, including statistics.

BY THE COURT:

/s/ C. Darnell Jones, II

C. DARNELL JONES, II

26, 2007) (objections which do not respond to magistrate judge's recommendation on claim, but instead repeat assertions raised in petition are properly overruled).